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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,220	02/19/2004	Roland A. Foubert	2340-67880	7404
24197	7590	10/05/2006	EXAMINER	
KLARQUIST SPARKMAN, LLP			GRAY, LINDA LAMEY	
121 SW SALMON STREET				
SUITE 1600			ART UNIT	
PORTLAND, OR 97204			PAPER NUMBER	
			1734	

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/783,220

Applicant(s)

FOUBERT ET AL.

Examiner

Linda L. Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-25 and 28-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33 is/are allowed.
- 6) ☒ Claim(s) 21-25, 28-32, 34, 35 and 38 is/are rejected.
- 7) ☒ Claim(s) 36 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Claim Rejections - 35 USC 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 21-24, 28-31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergstein (US 2,628,179) in view of Okushita et al. (US 6,422,283 B1).

Claim 21, Bergstein teaches a method for forming cutting edge 16 on a dispensing carton where edge 16 is a film and the carton is paper. The method includes supplying roll 29 of tape 28 to an applicator station at roller 31, applying a length of tape 28 to a length of carton board 21 and laminating tape 28 to board 21, and cutting board 21 and tape 28 lengthwise to separate board 21 into carton blanks and form edge 16 on each blank (c 5, L 25, to c 8, L 64).

Claim 21, Bergstein teaches tape 28 to include an adhesive on one side (c 6, L 14-19); however, Bergstein does not teach tape 28 to be a polymeric material, instead of metal.

Okushita et al. teach a method for forming cutting edge 7a on dispensing carton 1 by cutting a cutter having edge 7a from a tape (Fig 1-2, 6-14; c 8, Second Embodiment). Okushita et al. teach using plastic for tape S instead of the art recognized metal alternative for improved wound prevention and incineration of the cutter (c 1, L 24-43).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein that tape 28 be a polymeric material,

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instead of metal, because Okushita et al. teach using such for a carton cutter instead of the art recognized metal alternative for improved wound prevention and incineration of the cutter.

Claim 22, Bergstein teaches that cutting board 21 and tape 28 forms a serrated edge in tape 28 and along the cutting edge of each blank (see Fig 1 also). Claim 23, Bergstein teaches the blanks include front, bottom, and rear panels 1, 2, and 3, respectively, as well as lid 4 (see Figs 1 and 3 also). Claim 24, Bergstein teaches that edge 16 is formed in panel 1 (see Figs 1 and 3 also). Claim 28, Bergstein teaches board 21 and tape 28 to be cut simultaneously such that tape 28 and panel 1 each have a matching profile that together form edge 16 (see Figs 1, 3, 9, and 10 also). Claim 29, Bergstein teaches that tape 28 is applied in registry with predetermined adjacent edges of the blanks (see Figs 10 and 11 also) cut from boards 21. Claim 31, Bergstein teaches tape 28 to have a thickness of 0.003 to 0.010 inches (0.0762 to 0.254 mm). Claim 38, Bergstein teaches simultaneously cutting board 21 and tape 28 lengthwise to separate board 21 into separate blanks with a cutting edge on each blank.

Claim 30, which depends from 21, Bergstein teaches applying adhesive at coater 30 after unwinding from roll 29 and does not teach that tape 28 includes the adhesive already.

However, Okushita et al. teach in the same art of applying a cutting edge to a carton that the tape already includes the adhesive with the use of liner S1 (c8, Second Embodiment).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein that tape 28 includes the adhesive already because Okushita et al. teach in the same art of applying a cutting edge to a carton that it is conventional that the tape that forms the cutting edge already includes the adhesive with the use of a liner where such in Bergstein would eliminate the use of coater 30.

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3. Claims 25 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergstein in view of Okushita et al. as applied to claims 21-24, 28-31, and 38 above, and further in view of Johnson (EP 0 776 848 A2).

Claims 25 and 35, Bergstein in view of Okushita et al. teach a polymeric cutter but not that the polymeric material is polyester, polyethylene, or polypropylene.

Johnson teaches in the same art of applying a separate cutting edge to a carton that the polymeric material for the polymeric cutter can be polyester, polyethylene, or polypropylene (p 3, L 43-48).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein in view of Okushita et al. that the polymeric material for the polymeric cutter be polyester, polyethylene, or polypropylene because it is obvious to use a material which is conventional and successful in the same art. Since the material for the cutter is the same as presently claim, the cutter is considered to have a heat resistance between 160oF to 350oF as claimed.

4. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bergstein in view of Okushita et al. as applied to claims 21-24, 28-31, and 38 above, and further in view of Kerr (US 3,729,648).

Claim 34, Bergstein does not teach tape 28 to be corona treated.

Kerr teaches corona treatment of a web to enhance coatability of an adhesive thereto (c 1, L 10-31).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein that tape 28 is corona treated to enhance attachment of the adhesive thereto.

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5. Claim 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Bergstein in view of Okushita et al. as applied to claims 21-24, 28-31, and 38 above, and further in view of Marcalus (US 1,843,429).

Claim 32, Bergstein teaches using different adhesives in column 3, lines 46-70, but does not specifically recite a hot melt adhesive.

Marcalus teaches bonding tape C to the edge of carton blank B and then cutting tape C and blank B to form the cutting edge. The bonding adhesive is suggested to be a hot melt type at page 1, line 86, to page 2, line 10.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein that the adhesive be, instead, a hot melt because Marcalus teaches using such an adhesive for bonding a tape cutter precursor to a carton blank and it is obvious to replace one adhesive with another art recognized alternative adhesive in the same art.

Allowable Subject Matter

6. Claim 33 is allowed.

Claims 36-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

7. The following is an examiner's statement of reasons for the indication of allowable subject matter:

claim 33: Marcalus does not teach that tape C is applied to board B with one or more heated rollers in that Marcalus specifically recites applying tape C using a reciprocating applicator to cut and apply tape C where the applicator is not heated, and Marcalus does not teach cutting board B and tape C lengthwise to separate carton B into carton blanks and form the cutting edge on each blank; and, Bergstein does not

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teach that tape 28 is applied to board 21 with one or more heated rollers in that Bergstein specifically recites applying tape 28 using roller 31 which is not heated where the adhesive is not a hot melt adhesive and although Marcalus teaches using a hot melt adhesive as the adhesive applied to tape C, the prior art of record does not suggest using a heated roller to apply a polymeric tape having a hot melt adhesive for adhering; and

claim 36: Bergstein does not teach that the cutting edge projects above the edge of the front panel in that the cutting operation of Bergstein cuts the board and the tape in the same plane to form a cutting edge flush with the edge of the front panel.

Response to Applicant's Comments

8. Applicant's comments to the prior Office action have been fully considered. The rejections over Marcalus is withdrawn in that Marcalus does not teach, in independent claim 21, cutting the carton board and tape lengthwise to separate the carton board into carton blanks and form a cutting edge on each carton blank.

Bergstein in view of Okushita et al. is considered to teach the limitation of claim 21 of supplying a roll of tape to an application station, the tape having a polymeric backing coated with an adhesive on one side. Specifically, Bergstein teaches the supplying a roll 29 of tape 28 to an application station 31, the tape having a metal backing coated with an adhesive on one side in that tape 28 passes over adhesive applicator 30. Okushita et al. teach the limitation of a polymeric backing: Okushita et al. teach a method for forming cutting edge 7a on dispensing carton 1 by cutting a cutter having edge 7a from a tape (Fig 1-2, 6-14; c 8, Second Embodiment). Okushita et al. teach using plastic for tape S instead of the art recognized metal alternative for improved wound prevention and incineration of the cutter (c 1, L 24-43). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein that tape 28 be a polymeric material, instead of metal, because Okushita et al. teach using such for a carton cutter instead of the art recognized metal alternative for improved wound prevention and incineration of the cutter. The combination teaches a polymeric tape 28 on roll 29 instead of metallic tape.

Applicant indicates in the response that an advantage of forming the cutting edge from a polymeric tape instead of metal strips is that the polymeric material is not as sharp as and is less likely to cause injury to the consumer as metal. Note column 1, lines 24-43 of Okushita et al. where it is recited that metallic cutters are avoided in the invention of Okushita et al. because the finger tip is very likely to be wounded.

It is granted that Okushita et al teach forming a cutter first and then adhering the cutter to the blank. However, this is not considered to negate the general teaching

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of the reference that a polymer material is an art recognized metal alternative for improved wound prevention and incineration of the cutter.

With respect to claim 31, the primary reference teaches to Bergstein teaches tape 28 to have a thickness of 0.003 to 0.010 inches (0.0762 to 0.254 mm). Column 5, line 67, to column 6, line 2 of Okushita et al. teach a cutter thickness of 0.2-0.5 mm when the cutter is hard paper, and the reference is not referring to a polymeric cutter thickness; so, Okushita et al. is not seen to teach against the use of polymeric tape having a thickness in the range recited in claim 31.

This action is non-final in view of claim 32 was inadvertently omitted in the prior Office action.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda Gray whose telephone number is (571) 272-1228. The examiner can normally be reached Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla, can be reached at (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public Pair. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-1997 (toll-free).

llg

September 25, 2006



LINDA GRAY
PRIMARY EXAMINER